upon it. To bring the section into play the person when doing the act or delivering the thing must do the act "for another person" or deliver some thing "to him". So that his then present intention must be to do the act or to deliver the thing for or to another.

It was argued before their Lordships as indeed in the Federal Court (as appears from the notes of Tan Ah Tah F.J.) that doing the act means no more than that the act must be one which in fact benefits another. It was argued that the crucial point was that although you may do the act for your own benefit yet if in the end *ex post facto* you do not obtain that benefit but another does then you may claim against that other under section 71 as an act done for him. This seems to their Lordships a complete misreading of the section.

Their Lordships are fortified in their judgment by the observations of Lord Simonds on section 70 of the Indian Contract Act in *Governor-General of India* v. *Madura.*[1]

It is clear for the reasons already given that when the road was built in 1961 it was built by Susur Rotan, though no doubt with the full knowledge, agreement and indeed day to day approval of Mr. Siow, for its own benefit for under the chain of contracts it was the body who was going to exploit the mineral lands. It was not done for another.

This was indeed conceded in effect by counsel for Susur Rotan in the Federal Court who (according to the notes of Thomson L.P.) said "That we built the road for our own benefit does not exclude the section."

The Lord President himself, though it is true in that part of his judgment dealing with the alleged oral contract, said:—

> "There was no satisfactory evidence that the making of the road would accelerate in any way the granting of the lease to Mr. Siow. On the other hand it was something that would have to be done some time as part of the development of the mine, and be done at the expense of Susur Rotan as the operating company in whatever way the sub-lease came to them."

It seems clear to their Lordships that Susur Rotan fails to establish this second condition.

The third condition, that it must not be intended to be done gratuitously supports, as their Lordships think, their view of the second condition namely that doing the act for another person must be literally construed, for it is difficult to describe an act done for oneself as gratuitous; the adjective does not fit.

Put rather differently it seems clear that the act of building the road in this case was, for the reasons just mentioned, intended to be done gratuitously for the simple reason that at the time it was done Susur Rotan did not intend to look to another for reimbursement of its expenditure.

In their Lordships' judgment Susur Rotan also fail to satisfy this condition.

With all respect to the judgment of Thomson L.P. they think that he failed to appreciate the importance of judging of the matter at the time that the act or delivery is performed and that it must be a non-gratuitous act performed for another person. The condition that another must ultimately enjoy the benefit of the act or delivery must also be satisfied but it is only one of the four necessary tests laid down by the section.

With regard to the fourth condition their Lordships cannot accept the argument advanced on behalf of Mr. Siow. It was argued that his only interest in the mineral lands was a royalty of 50c. per ton extracted and so he gained no benefit from the building of the road. But it is clear on the facts though the details are obscure and were never fully explored that Mr. Siow has benefited beyond that from the building of the road.

If the other conditions of the section are satisfied then compensation must be paid for that act if the person sued has enjoyed that benefit.

That compensation must *prima facie* be measured by the worth of the act done. Whether or not it ought to be modified by an assessment of the benefit enjoyed is not a matter which their Lordships propose to discuss in this judgment.

For these reasons their Lordships will advise the Head of Malaysia that the appeal should be allowed and the order of Azmi J. be restored and that the first respondent pay the costs of the appellant of this appeal and in the Federal Court.

Appeal allowed.

Solicitors: *Lipton & Jefferies; Parker, Garrett & Co.*

CHUA SOO LEE & ANOR. v. CITY COUNCIL OF SINGAPORE

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Chua J.) April 18, 1967]

[Singapore — Federal Court Civil Appeal No. Y50 of 1966]

Practice and Procedure — Writ unserved — Application to renew writ after death of plaintiff without complying with the requirements of R.S.C. O. XVIII — Writ renewed and served on defendants — Conditional appearance — Writ and service set aside — Appeal against order setting aside — Abatement of action — Interlocutory orders irregular.

In this case the writ was taken out by the original plaintiff on April 2, 1962 but it was not served at all and towards the end of March the following year before the period of 12 months allowed for the service of the writ would lapse, an *ex parte* application was made to renew the writ when an order was granted for its renewal for another 6 months. The factual position, however as regards the plaintiff, was that he had died a few months earlier on November 10, 1962. Just before the final expiry date the writ was served on the defendants who thereupon filed a memorandum of conditional

appearance and applied to the court to set aside the writ. Judgment of the court below was delivered on December 6, 1966 setting aside the renewed writ and the service thereof on the defendants. When that judgment was delivered the parties to the action continued to be the original parties. Three weeks later on December 28, 1966 the present appellants on an *ex parte* application obtained an order to represent the estate of the deceased plaintiff in the proceedings and obtained a further order that they be at liberty to continue the action including an appeal against the judgment of December 6, 1966.

Held: where a sole plaintiff dies during the currency of an action the principle is that the action becomes abated or defective until the requirements of R.S.C. O. XVIII are complied with. Accordingly, under the circumstances of this case an order would be made discharging first the order made to renew the writ of summons and as a necessary consequence an order made setting aside the writ and the service of the writ on the defendants.

FEDERAL COURT.

Harry L. Wee (*Lim Chor Pee* with him) for the appellants.

David Chelliah for the respondents.

Wee Chong Jin C.J.: This action has reached perhaps a very unfortunate stage. It was commenced in the name of Wong Chow Dow against the City Council of Singapore in April of 1962 being an action for damages for breach of contract.

The writ was taken out on the 2nd of April 1962 but it was not served at all and towards the end of March the following year before the period of 12 months allowed for the service of the writ would lapse, an application was made to renew the writ for a further period of six months. That was necessarily an *ex parte* application which was heard on the 29th of March 1963 when an order was made to renew this yet unserved writ.

The factual position however as regards the plaintiff was that he had died a few months earlier on the 10th of November 1962. I will deal with the effect of that in relation to the writ at a later stage.

Having obtained an order to renew the writ, the writ was served, just before the final expiry date, on the defendants, the City Council of Singapore, for the first time on the 28th of September 1963. The defendant thereupon filed a memorandum of conditional appearance on the 4th of October 1963 and on the 11th of October 1963 applied to the High Court to set aside the writ. This application was made because the order obtained on the original application to renew the writ was an order that the writ be renewed for a period of six months from the date of the said writ and because it was contended that the order to renew should not have been made on the ground put forward mainly that the writ had not been served owing to negotiations for arbitration. This application was heard in October 1963 but unfortunately it was not until 6th December 1966 that judgment was delivered setting aside the renewed writ and the service thereof on the defendants on the ground that the fact that negotiations for arbitration were proceeding was not a good and sufficient ground for giving leave to renew the writ of summons. When that judgment was delivered the parties to the action continued to be the original parties i.e. Wong Chow Dow and the City Council of Singapore.

Three weeks later on the 28th of December 1966 the present appellants on an *ex parte* application obtained an order to represent the estate of the deceased plaintiff in the proceedings and obtained a further order that they be at liberty to continue the action including an appeal against the judgment of the 6th of December 1966.

It will be seen from this history of the proceedings that although the original plaintiff had died on the 10th of November 1962 the various interlocutory applications made to the High Court continued to be made without the requirements of Order XVIII of the Rules of the Supreme Court being complied with.

In the case of an action where a sole plaintiff dies during the currency of the action the undisputed principle is that the action becomes abated or defective until steps are taken to continue proceedings under the relevant rules of the Supreme Court. That being the principle, it is clear therefore that all the interlocutory proceedings beginning from the application to renew the writ in March 1963, months after the death of the plaintiff Wong Chow Dow and ending with the application to set aside the writ and the service of the writ on the defendants were irregular. That being the effect of proceedings taken when an action has become abated or defective because of the death of either the sole defendant or plaintiff, the remaining question is what this court ought to do on the position as it stands today where an appeal is before us in respect of what we consider is an irregular order which has been brought about because of a previous irregular order taken out in the name of the deceased sole plaintiff.

I am of the opinion that in these circumstances we ought to make an order discharging first the order made to renew the writ of summons in March 1963 and as a necessary consequence an order made setting aside the writ and the service of the writ on the defendants on the 6th of December 1966. That would dispose of the present appeal without going into the merits of the matter.

Tan Ah Tah F.J. and **Chua J.** concurred.

Order accordingly.

Solicitors: *Chor Pee & Hin Hiong; Drew & Napier.*